IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

Crl.MC.No. 126 of 2007()

AGAINST THE ORDER DATED 28/11/2006 IN MP 5460/06 IN
CC.101/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II (FOREST OFFENCES),PUNALUR

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PETITIONER/ACCUSED:

O.J.ABRAHAM, S/O.JOSEPH, SHOLY TYRE SERVICE,
OTTATHYCAL VEEDU, NEAR CHANDRA THEATRE,
PUNALUR POST, PATHANAPURAM TALUK,
KOLLAM DISTRICT.

BY ADV. SRI.P.KURUVILLA JACOB

RESPONDENTS/COMPLAINANT & STATE:

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1. JUBIN BABU, S/O.LATE K.K.BABU,
KUZHIYATHU VILA, KARAVALOOR MURI & VILLAGE,
KOLLAM DISTRICT.

2. BABIN BABU, S/O. LATE K.K.BABU, KUZHIYATHU VILA,
KARAVALOOR MURI & VILLAGE,
KOLLAM DISTRICT.

3. ELIZABETH BABU, AGED 50, W/O.LATE K.K.BABU,
KUZHIYATHU VILA, KARAVALOOR MURI & VILLAGE,
KOLLAM DISTRICT.

4. STATE OF KERALA REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.126 of 2007

Dated this the 15th day of January 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. The complainant expired during the pendency of the proceedings. The elder son of the deceased/complainant filed an application and he was permitted by the learned Magistrate to prosecute the complaint. That legal heir of the deceased/complainant secured an employment at Bangalore. He was, therefore, not able to appear before the learned Magistrate. In these circumstances, in the absence of the said legal heir of the complainant before the court on a number of occasions, a brother of the said legal heir, who is himself a legal heir, filed an application that he may be permitted to prosecute the complaint. That application was allowed by the learned Magistrate. While granting permission to the second son of the deceased to prosecute the complaint filed by the deceased/complainant, the learned Magistrate directed that the earlier permission granted to the first son shall stand disallowed and dismissed that earlier petition which had already

been allowed by the learned Magistrate.

2. The petitioner has come to this court with the grievance that the criminal court does not have any power to revise or review its own orders and in these circumstances, the order passed by the learned Magistrate dismissing an application already granted is not justified. This, in short, is the controversy.

3. I find absolutely no reason or justification to invoke the jurisdiction under Section 482 Cr.P.C. Though the learned Magistrate had noted that the earlier application was dismissed, what the learned Magistrate virtually did was, to grant permission to another legal heir to prosecute the complaint, the legal heir who obtained such permission earlier having become disabled and unable to prosecute the complaint. I find absolutely no injustice or failure of justice resulting from the impugned order. When the elder son/legal heir was unable to appear before the court, such non-appearance may have entailed dismissal of this complaint under Section 256(1) Cr.P.C. But the learned Magistrate, realising the reality of the situation, permitted the brother of the said legal heir to continue the

prosecution. It is trite that when the complainant in a prosecution is dead, any fit person can be permitted to continue the proceedings, the earlier legal heir who acquired permission having become unable to continue to prosecute the complaint, I am of the opinion that the learned Magistrate committed no such error which would justify invocation of the jurisdiction under Section 482 Cr.P.C, when the learned Magistrate granted permission to a brother of the said legal heir, who is himself a legal heir, to further prosecute the complaint. It was certainly not review of an earlier order. It was a subsequent order, in view of the changed circumstances, permitting another fit person other than the one to whom permission was granted earlier, to continue to prosecute the complaint filed by the common predecessor. Though the learned Magistrate ineloquently stated that the earlier petition which was once allowed shall stand dismissed, what was virtually meant was that notwithstanding the earlier order the present direction was issued in the changed circumstances. That cannot be reckoned as a review or revision of the earlier order nor objectionable alteration of an order

already passed. In any view of the matter, no miscarriage or failure of justice results from the impugned order which eminently advances the interests of justice.

4. This petition is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006